

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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| <p>JACQUES EVIGLO,</p> <p style="text-align: center;">Movant,</p> <p style="text-align: center;">vs.</p> <p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Respondent.</p> | <p style="text-align: center;">4:21-CV-04069-KES</p> <p style="text-align: center;">ORDER DENYING MOVANT'S MOTION TO APPEAL WITHOUT PREPAYMENT OF FEES</p> |
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Movant, Jacques Eviglo, filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Docket 1. Judgment was entered against Eviglo, and he filed a notice of appeal. Dockets 25, 26. The court denied Eviglo a certificate of appealability. Docket 24 at 6-7. Eviglo now files a motion to appeal without prepayment of fees and included a prisoner trust account report. Dockets 27, 28.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the PLRA do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S. C. § 1915(a)(1), (3).

Eviglo's prisoner trust account report indicates that he has average monthly deposits to his prisoner trust account of \$1,281.77 and an average

monthly balance of \$49.07. Docket 28 at 1. Because Eviglo appears to have sufficient monthly deposits to pay the \$505 appellate filing fee, his motion to appeal without prepayment of fees (Docket 27) is denied. Eviglo must pay the filing fee of **\$505 by March 2, 2022**.

IT IS ORDERED:

1. That Eviglo's motion to appeal without prepayment of fees (Docket 27) is denied.
2. Eviglo shall pay the \$505 appellate filing fee to the Clerk of the United States District Court for the District of South Dakota. Eviglo must pay the fee by **March 2, 2022**.

Dated January 31, 2022.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE